

AMENDED IN SENATE MAY 20, 2004

AMENDED IN SENATE MAY 4, 2004

SENATE BILL

No. 1453

Introduced by Senator Figueroa
(Coauthors: Senators Kuehl, Ortiz, and Romero)
(Coauthor: Assembly Member Jackson)

February 19, 2004

~~An act to amend Sections 1400, 1402, and 1403 of, and to add Section 1401.5 to~~ *An act to amend Section 1401 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1453, as amended, Figueroa. Employment: outsourcing.

Existing law precludes employers from ordering a mass layoff, relocation, or termination of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies. That law *requires those employers to include in the notice the elements required by the federal Worker Adjustment and Retraining Notification Act.*

Existing law also provides for civil penalties against an employer that who fails to provide the required notices, and entitles employees who bring a civil action to enforce these provisions to recover attorney's fees at the discretion of the court.

This bill would ~~require any employer who outsources jobs that would result in the replacement of 20 or more workers in California to, not less than 60 days before outsourcing the job functions, give written notice~~

to the Employment Development Department and the employees based in California whose jobs would be affected by the outsourcing.

The bill would provide for civil penalties against those employers who fail to provide the required notices and entitle employees who bring a civil action to enforce these provisions to recover attorney's fees at the discretion of the court *additionally require those employers to give notice to the Employment Development Department of the number of employees laid off, relocated, or terminated as a result of outsourcing, as defined, by the employer.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. — Section 1400 of the Labor Code is amended to~~

2 *SECTION 1. Section 1401 of the Labor Code is amended to*
3 *read:*

4 1401. (a) An employer may not order a mass layoff,
5 relocation, or termination at a covered establishment unless, 60
6 days before the order takes effect, the employer gives written
7 notice of the order to the following:

8 (1) The employees of the covered establishment affected by the
9 order.

10 (2) The Employment Development Department, the local
11 workforce investment board, and the chief elected official of each
12 city and county government within which the termination,
13 relocation, or mass layoff occurs.

14 (b) An employer required to give notice of any mass layoff,
15 relocation, or termination under this chapter shall include in its
16 notice the elements required by the federal Worker Adjustment
17 and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

18 (c) *An employer required to give notice of any mass layoff,*
19 *relocation, or termination under this chapter shall include in its*
20 *notice to the Employment Development Department the number of*
21 *employees laid off, relocated, or terminated as a result of*
22 *outsourcing by the employer. Notwithstanding Section 1400, for*
23 *purposes of this subdivision, “outsourcing” means employing*
24 *workers located outside the United States either directly as*
25 *employees of the employer or indirectly through contracts with*
26 *contractors or subcontractors.*

(d) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a mass layoff, relocation, or termination is necessitated by a physical calamity or act of war.

read:

1400. ~~The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:~~

(a) ~~“Covered establishment” means any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons.~~

(b) ~~“Employer” means any person, as defined by Section 18, who directly or indirectly owns and operates a covered establishment. A parent corporation is an employer as to any covered establishment directly owned and operated by its corporate subsidiary.~~

(c) ~~“Layoff” means a separation from a position for lack of funds or lack of work.~~

(d) ~~“Mass layoff” means a layoff during any 30-day period of 50 or more employees at a covered establishment.~~

(e) ~~“Outsource” means the transfer by an employer whose principal place of business is in California of job functions from a location within California to a location outside the United States.~~

(f) ~~“Relocation” means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.~~

(g) ~~“Termination” means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.~~

(h) (1) ~~This chapter does not apply where the closing or layoff is the result of the completion of a particular project or undertaking of an employer subject to Wage Order 11, regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, of the Industrial Welfare Commission, and the employees were hired with the understanding that their employment was limited to the duration of that project or undertaking.~~

(2) ~~This chapter does not apply to employees who are employed in seasonal employment where the employees were~~

1 hired with the understanding that their employment was seasonal
2 and temporary.

3 (i) ~~“Employee” means a person employed by an employer for~~
4 ~~at least 6 months of the 12 months preceding the date on which~~
5 ~~notice is required.~~

6 SEC. 2. ~~Section 1401.5 is added to the Labor Code, to read:~~

7 1401.5. ~~Any employer who outsources jobs that would result~~
8 ~~in the replacement of 20 or more workers in California shall, not~~
9 ~~less than 60 days before outsourcing the job functions, give written~~
10 ~~notice to the Employment Development Department and the~~
11 ~~employees based in California whose jobs would be affected by the~~
12 ~~outsourcing.~~

13 SEC. 3. ~~Section 1402 of the Labor Code is amended to read:~~

14 1402. ~~(a) An employer who fails to give notice as required by~~
15 ~~paragraph (1) of subdivision (a) of Section 1401 and Section~~
16 ~~1401.5 before ordering a mass layoff, relocation, or termination,~~
17 ~~or outsourcing jobs is liable to each employee entitled to notice~~
18 ~~who lost his or her employment for:~~

19 (1) ~~Back pay at the average regular rate of compensation~~
20 ~~received by the employee during the last three years of his or her~~
21 ~~employment, or the employee’s final rate of compensation,~~
22 ~~whichever is higher.~~

23 (2) ~~The value of the cost of any benefits to which the employee~~
24 ~~would have been entitled had his or her employment not been lost,~~
25 ~~including the cost of any medical expenses incurred by the~~
26 ~~employee that would have been covered under an employee~~
27 ~~benefit plan.~~

28 (b) ~~Liability under this section is calculated for the period of the~~
29 ~~employer’s violation, up to a maximum of 60 days, or one-half the~~
30 ~~number of days that the employee was employed by the employer,~~
31 ~~whichever period is smaller.~~

32 (c) ~~The amount of an employer’s liability under subdivision (a)~~
33 ~~is reduced by the following:~~

34 (1) ~~Any wages, except vacation moneys accrued prior to the~~
35 ~~period of the employer’s violation, paid by the employer to the~~
36 ~~employee during the period of the employer’s violation.~~

37 (2) ~~Any voluntary and unconditional payments made by the~~
38 ~~employer to the employee that were not required to satisfy any~~
39 ~~legal obligation.~~

1 ~~(3) Any payments by the employer to a third party or trustee,~~
2 ~~such as premiums for health benefits or payments to a defined~~
3 ~~contribution pension plan, on behalf of and attributable to the~~
4 ~~employee for the period of the violation.~~

5 ~~SEC. 4. Section 1403 of the Labor Code is amended to read:~~

6 ~~1403. An employer who fails to give notice as required by~~
7 ~~paragraph (2) of subdivision (a) of Section 1401 or Section 1401.5~~
8 ~~is subject to a civil penalty of not more than five hundred dollars~~
9 ~~(\$500) for each day of the employer's violation. The employer is~~
10 ~~not subject to a civil penalty under this section, however, if the~~
11 ~~employer pays to all applicable employees the amounts for which~~
12 ~~the employer is liable under Section 1402 within three weeks from~~
13 ~~the date the employer orders the mass layoff, relocation, or~~
14 ~~termination, or enters into the outsourcing contract.~~

